3091.

SUPREME COURT OF THE UNITED STATES.

No. 88.

THE OHIO LIFE INSURANCE AND TRUST COMPANY, PLAINTIFF IN ERROR,

vs.

HENRY DEBOLT, TREASURER OF HAMILTON COUNTY.

IN ERROR TO THE DISTRICT COURT OF THE STATE OF OHIO, FOR HAMILTON COUNTY.

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GIDEON, print.

Pleas at Cincinnati, before the district court of the State of Ohio, in and for the county of Hamilton; the honorable John A. Corwin, chief justice of the supreme court of the State of Ohio, presiding, and the honorable Alfred G. W. Carter, and the honorable Edward Woodruff, and the honorable John B. Stallo, judges of the court of common pleas, in and for the county of Hamilton, associates, at the term of April, anno Domini one thousand eight hundred and fifty-three.

Morris, Tilden & Rairden, George E. Pugh.—V. & J. T. Worthington.

HENRY DEBOLT, treasurer of Hamilton county,
vs.
THE OHIO LIFE INSURANCE & TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick. } No. 511.—In chancery.

Appeal from court of common pleas.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of July, in the year of our Lord eighteen hundred and fifty-two, there was filed in the office of the clerk of our district court, of the State of Ohio, in and for the county of Hamilton, the original papers and pleadings, as well as a duly certified transcript of all the proceedings and decree had and made by the court of common pleas, in and for said county, in a certain [suit] in chancery lately pending before the said court, wherein Henry Debolt, treasurer of Hamilton county, was complainant, and The Ohio Life Insurance and Trust Company, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick, were defendants; which said transcript, and original papers and pleadings, are closed in the words and figures as follows, to wit:

Transcript.

Pleas at Cincinnati, in the county of Hamilton, and State of Ohio, at the separate sitting of the court of common pleas, begun and held according to the constitution and the laws, and the rules and orders of said court, adopted and published at the joint session thereof, which was commenced on the 3d day of May, A. D. eighteen hundred and fifty-two; this separate sitting being that ordered and regulated by said rules and orders of court to be held by and before the honorable Donn Piatt, one of the judges of said court, and commencing, as ordered by

said court in joint session, on the 6th day of May in said year, by and before said Donn Piatt, judge aforesaid.

Appearance to May term, 1852.

Morris, Tilden & Rairden, and G. E. Pugh.

HENRY DEBOLT, treasurer of Hamilton county,
vs.
OHIO LIFE INSURANCE & TRUST COMPANY, and others. } In chancery.

May term, A. D. 1852.

1852, June 5th. Bill filed, and subpœna issued forthwith.

Return.

1852, June 5th. Served by copy personally on Charles Stetson, President of the Ohio Life Insurance and Trust Company.

C. J. W. SMITH,
By F. ARMSTRONG,
Dep. sheriff.

1852, June 9th. Demurrer filed.

1852, June 21st. Answer of Ohio Life Insurance and Trust Company filed.

Min. 132.—*Piatt.*

Saturday, June 26, 1852.—Journal, p. 132.

HENRY DEBOLT, treasurer of Hamilton county,
vs.
THE OHIO LIFE INSURANCE & TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick. } 5705.—In chancery.

This cause came on to be heard upon the bill of complaint filed the fifth day of June instant; the demurrer of the Ohio Life Insurance and Trust Company, filed the ninth day of June instant; the answer of the said The Ohio Life Insurance and Trust Company, filed the twenty-first day of June instant; and the motion of the complainant for the allowance of an injunction, and the appointment of a receiver, as provided by the act of the General Assembly, entitled An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State, passed the twenty-first day of March, in the year eighteen hundred and fifty-one, and was argued by counsel; on consideration whereof, the court being fully advised of the premises, it is ordered that the complainant, Henry Debolt, give bond in the sum of five thousand dollars, with two sureties, to be approved by the clerk

of this court, and that thereupon the defendant, The Ohio Life Insurance and Trust Company, be enjoined from receiving of the defendants, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick; and the said Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick, defendants, be enjoined from paying unto the said The Ohio Life Insurance and Trust Company, defendant, the amounts respectively due, or to become due from them, the said Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick, to the said The Ohio Life Insurance and Trust Company, or any interest due or to accrue thereon, or any part of the said amount or interest as aforesaid.

And it is further ordered, that Washington McLean be appointed receiver, under the provisions of the act of the General Assembly above mentioned, that he give bond in the sum of twenty thousand dollars, with two or more sureties, to be approved by the clerk of this court; and that thereupon the defendants, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick, be directed and enjoined to pay unto the said receiver the interest due or to accrue upon the amounts respectively due or to become due from them to the said The Ohio Life Insurance and Trust Company, until otherwise ordered, or until the sum claimed by complainant in his said bill be paid to said receiver; and that the said receiver report, from term to term of this court, the amounts by him received, from whom, and at what time; and should said sum, so claimed by complainant in his said bill, be paid to him before the adjournment of this court at its present term, he is ordered to report the same, and to bring the money into court, to abide the further order of the court.

Notice of appeal by defendants.

Saturday, June 26, 1852. (Journal, p. 132.)—Piatt.

HENRY DEBOLT, Treasurer of Hamilton county,
vs.
THE OHIO LIFE INSURANCE AND TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick. } 5705.—In chancery.

And now comes the Ohio Life insurance and Trust Company, and brings into court the sum of six thousand eight hundred and sixty-four dollars and seventy-eight cents, the amount of the tax penalty and treasurer's fee claimed, with interest thereon, and moves the court to dissolve the injunction and vacate the order heretofore made allowing the same and appointing a receiver; whereupon the court directs the clerk to deposit the said sum of six thousand eight hundred and sixty-four $\frac{78}{100}$ dollars in some safe and suitable place, to be approved by the

parties, at a rate of interest not less than six per centum yearly, subject to such order of the court as may hereafter be made; and it is ordered, furthermore, that the enforcement of the order heretofore made allowing said injunction and appointing said receiver be suspended, and that all further proceedings under the same be stayed until otherwise ordered by court upon due notice.

Notice of appeal by defendants.

1852, June 26th, agreement filed. 1852, July 1st, exhibits filed.

Thursday, July 1st, 1852. (Journal, p. 150.)—Piatt.

HENRY DEBOLT, Treasurer of Hamilton county,
vs.
THE OHIO LIFE INSURANCE AND TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick. } 5705.—Chancery.

This cause, by consent of parties, came on for final hearing this day upon complainant's bill, the demurrer and answer of the Ohio Life Insurance and Trust Company, the former orders entered in this cause, exhibits and proofs; and thereupon counsel being heard, and the pleadings, former orders, exhibits, and proofs carefully examined and *were* considered, the court finds the equity of the case with the complainant, and that he is entitled to the relief sought by his said bill, and the matters set up by the said answer furnish no sufficient bar to the relief sought, and thereupon the court finds the said tax in said bill charged, and penalty and charges thereon, with interest to 26th June, 1852, to amount to $\$6{,}864\frac{78}{100}$, and that the said Ohio Life Insurance and Trust Company having on that day paid the same into court, subject to such order as the court might make in this cause; and the court now being satisfied that the said sum of $\$6{,}864\frac{78}{100}$ should be paid, with interest accrued thereon, to the said complainant, in full satisfaction of the tax in his said bill set up, with the penalty, charges, and interest thereon, doth order, adjudge, and decree, that the said complainant is, in equity, under the statute in such case made and provided, entitled to have and collect from the said Ohio Life Insurance and Trust Company the said sum of $\$6{,}864\frac{78}{100}$, with the interest accrued thereon, and deposited in this court, in full of the said tax, penalties, and charges, with interest thereon; and thereon order, adjudge, and decree, that the clerk of this court withdraw the same, with interest accrued thereon, from the place of deposit in which the same has been made, and pay the same over to the complainant, as the treasurer of the county of Hamilton; and also that the Ohio Life Insurance and Trust Company pay the costs in this cause, taxed at $\$$, in ten days, or execution issue therefor, as upon a judgment at law. And now come the Ohio Life Insurance and Trust Company and give notice of appeal as the statute directs, and thereon the court orders bond to be

given, in pursuance of the statute in such case made and provided, in the penal sum of $1,000.

Appealed. Bond filed and security given 12th July, A. D. 1852.

Bond—(Copy.)

Know all men by these presents, that we, the Ohio Life Insurance and Trust Company, Samuel P. Bishop, and Abraham M. Taylor, of the county of Hamilton, and State of Ohio, are held and firmly bound unto Henry Debolt, treasurer of Hamilton county, in the just and full sum of one thousand dollars, good and lawful money of the United States of America, for the payment whereof, well and truly to be made unto the said Henry Debolt, treasurer of Hamilton county, we do hereby bind ourselves, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated at Cincinnati, this 6th day of July, anno Domini, eighteen hundred and fifty-two. Whereas in the term of May, A. D. 1852, of the court of common pleas, held at the court-house, in the city of Cincinnati, within and for the county of Hamilton aforesaid, by the consideration of the honorable Donn Piatt, one of the judges of the said court sitting in separate session, the said Henry Debolt, treasurer of Hamilton county, recovered a decree against the said The Ohio Life Insurance and Trust Company for the sum of six thousand eight hundred and sixty-four $\frac{78}{100}$ dollars, and costs of suit, taxed at sixteen $\frac{53}{100}$ dollars. From which said decree the said The Ohio Life Insurance and Trust Company has given notice of appeal to the district court of the State of Ohio next to be holden within and for the said county of Hamilton.

Now, the condition of the above obligation is such, that if the said The Ohio Life Insurance and Trust Company shall prosecute said appeal to effect, and abide, and perform the order and judgment of the appellate court, and shall pay all moneys, costs, and damages which may be required of, or awarded against, the Ohio Life Insurance and Trust Company by the said court, then, and in such case, the said obligation to be void and of none effect; otherwise, to be and remain in full force and virtue in law.

SAMUEL P. BISHOP, [SEAL.]
A. M. TAYLOR. [SEAL.]

Signed, sealed, and acknowledged in the presence of—
J. S. SNIDER.

THE STATE OF OHIO,
Hamilton county, ss.

I, James M. McMaster, clerk of the court of common pleas, within and for the county of Hamilton aforesaid, do hereby certify, that the foregoing is a correct transcript of all the docket and journal entries of proceedings and decree had in the said court in the above-named case, as the same appear on the dockets and journals of said court in my

office, and also a correct copy of the original appeal bond in said cause, as the same appears on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court of common pleas, at Cincinnati, this 24th [SEAL.] day of July, anno Domini, one thousand eight hundred and fifty-two.

J. M. McMASTER, *Clerk.*
By J. S. SNIDER, *Deputy.*

Bill.

To the honorable the judges of the court of common pleas of the county of Hamilton, and State of Ohio, in chancery sitting:

Humbly complaining, showeth unto your honors your orator, Henry Debolt, that on the 31st day of May, A. D. 1851, your orator was, and hath ever since from thence continued to be, and still is, treasurer of the said county of Hamilton and State aforesaid. That as your orator is informed and believes, on the said 31st day of May, A. D. 1851, the Ohio Life Insurance and Trust Company, by Charles Stetson, president of said company, returned under oath of said Charles Stetson to the auditor of said county of Hamilton, that the amount of the capital stock of said company loaned in the said county of Hamilton was four hundred and ninety-four thousand three hundred and eight dollars and twenty-two cents, ($494,308 22.) And your orator believes and avers that the amount so returned was the true amount of the capital stock of said company so loaned by the said company in said county, and that the said return being so made to said county auditor, he, the said auditor, thereupon, and on or about the day and year aforesaid, placed the said amount so returned to him as aforesaid upon the duplicate of said county of Hamilton for taxation. And thereupon the said auditor proceeded, according to law, to levy on the said sum so returned the average rate or per cent. of the taxes levied for all purposes, upon the real and personal property of the said county of Hamilton, the rate so levied being nine mills and $\frac{8\,2\,5}{1\,0\,0\,0}$ of a mill on the dollar of the amount so returned, and the amount of the tax so levied and assessed, at the rate aforesaid, being four thousand eight hundred and fifty-six dollars fifty-seven cents and eight mills, ($4,856 57.8.) And the tax so levied and assessed in the manner aforesaid, and for the amount aforesaid, was by said county auditor then duly entered against said Trust Company in the said tax duplicate of said county for the said year eighteen hundred and fifty-one. And your orator further shows, that besides, and in addition to the capital stock of said Ohio Life Insurance and Trust Company loaned in the several counties of this State, (as he is informed and believes,) the said company before, and on, and after the said 31st day of May, A. D. 1851, held and was possessed of a large amount of capital not loaned in any county of the State, and held and was possessed of a large amount of surplus and contingent funds, not included in the

amount so as aforesaid returned to the auditor of said county by said company, and which by the laws of said State were subject and liable to be taxed for the same purposes, and to the same extent, that other personal property was or was liable to be taxed. That on or about the 23d day of March, 1852, the said Trust Company, by the oath of the said Charles Stetson, president of said company, made return to the auditor of said county of Hamilton of the amount existing on the said 31st day of May, 1851, of said surplus and contingent fund and capital not loaned in the several counties of this State, the said amount according to said return being on said 31st day of May, 1851, eighty-three thousand five hundred and seventy-eight dollars and seventy cents, $83,578 70,) being the true amount, as your orator is informed and believes, of the surplus and contingent fund and capital of said company not loaned in the several counties of this State, which said amount last aforesaid was then entered by said county auditor upon the grand levy for said Hamilton county, and upon which amount last aforesaid so returned and entered upon the grand levy as last aforesaid, there was duly levied and assessed against said company a tax of fifteen (15) mills on the dollar, amounting to twelve hundred and fifty-three dollars and sixty-eight cents, ($1,253 68.) And your orator avers, that the said tax last aforesaid was levied for the same purposes, and at the same rate, and to the same extent, that other personal property was, and was liable to be taxed for the year eighteen hundred and fifty-one, in the ward in which the office of said company was and is kept.

And your orator further showeth, that on or about the seventh day of October, A. D. 1851, a complete copy of the grand levy and duplicate of said county of Hamilton was by the said auditor thereof duly delivered and certified to your orator, as treasurer of the same county, for collection thereof, according to law, the said Ohio Life Insurance and Trust Company being duly charged therein with the said tax on the said capital of said company loaned in the said county of Hamilton, and with the said tax on said surplus and contingent fund, and capital not loaned. And your orator further represents, that the said Ohio Life Insurance and Trust Company, although often requested, hath not paid any part of either of said sums, but has wholly neglected and refused so to do, but hath made default in the payment of said taxes.

And your orator further shows, that the following named persons, together with other persons, (whom your orator prays he may be allowed to make parties defendant hereto when discovered,) are debtors of said company, as appears by the records of said county, viz: Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick. Your orator therefore prays that the said Ohio Life Insurance and Trust Company, and the said Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick, and the said Charles Stetson, president of said company, be made parties defendant hereto, and required to make full answer to the matter herein contained; and that the said Charles Stetson do discover and state in his answer, to be put in under oath, the

names of all the debtors of said company on account of loans of the capital of said company in the said county of Hamilton, and the exact amount due from each. And your orator further prays, that the said company may be enjoined from receiving, and the said debtors above named from paying, the amount due from them respectively to said company, or the interest thereon, or any part thereof; and that the court would be pleased to appoint some suitable person to be a receiver, to collect and receive the amounts due from the debtors of said company on account of loans in said county of Hamilton, and the interest thereon, and to hold the same, subject to the order and decree of the court; and, at the final hearing, the court would adjudge and decree that the said tax on the capital of said company, loaned in the said county of Hamilton, and the said tax on the said surplus, and contingent fund, and capital not loaned, and the interest and lawful penalty thereon, be paid to your orator; and that your orator may have such other and further relief as equity and conscience may require, and to your honors shall seem meet.

By MORRIS, TILDEN & RAIRDEN, and
G. E. PUGH, *his solicitors.*

The said Henry Debolt, being duly sworn, deposes and says, that all the matters stated in the above bill, from the information of others, he doth verily believe to be true; and that all the other matters therein contained are true, in substance and in fact.

H. DEBOLT.

[SEAL.]

Sworn to and subscribed before me, this fifth day of June, A. D. 1852.

WILLIAM D. JONES,
Notary public.

Subpœna.

STATE OF OHIO, *Hamilton county, ss.*

To Charles J. W. Smith, esq., sheriff of our said county, greeting:

We command that you summon the Ohio Life Insurance and Trust Company to appear before the judges of our court of common pleas, at the court-house in Cincinnati, in said county, forthwith, to answer a petition in chancery, exhibited against said company by Henry Debolt, treasurer of Hamilton county—and this said company shall in no wise omit, under the penalty of one thousand dollars—and have then and there this writ.

In testimony whereof, I, James M. McMaster, clerk of the said court, have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 5th day of June, Anno Domini 1852.

[SEAL.]

J. M. McMASTER, *Clerk H. C., O.*
By JAS. H. SAYRE, *Deputy.*

Endorsement: "To May term, 1852, (forthwith.)"

Sheriff's return.

"1852, June 5.—Served by copy, personally, on Charles S. Stetson, President of the Ohio Life Insurance and Trust Company."

C. J. W. SMITH, *Sheriff*,
By F. ARMSTRONG, *Deputy*.

Demurrer.

The demurrer of the Ohio Life Insurance and Trust Company, and Charles Stetson, president thereof, defendants, with others, to the bill of complaint of Henry Debolt, treasurer of Hamilton county, in the State of Ohio, complainant.

And the said The Ohio Life Insurance and Trust Company, and Charles Stetson, president thereof, defendants, come and demur to the said bill of the said Henry Debolt, treasurer of Hamilton county, in the State of Ohio, and for cause of demurrer show, that the said Henry Debolt, treasurer of Hamilton county, in the State of Ohio, by his said bill, has not made such a case as entitles him, in a court of equity, to any discovery from these defendants, or either of them, or to any relief against these defendants, or either of them; wherefore, and for other good causes, the said The Ohio Life Insurance and Trust Company, and Charles Stetson, president thereof, do demur to said bill, and pray judgment of this court whether they, or either of them, shall be compelled to make any further or other answer thereto, and that they may be dismissed with costs, &c.

V. & J. T. WORTHINGTON,
Solicitors.

Answer.

The answer of the Ohio Life Insurance and Trust Company, defendant, to the bill of complaint of Henry Debolt, treasurer of the county of Hamilton, in the State of Ohio, complainant.

Without waiving her demurrer, but insisting thereon, this respondent, for answer to said bill, or to so much and such parts thereof as she is advised it is material for her to make answer unto, comes and says, that Charles Stetson, the president of the said the Ohio Life Insurance and Trust Company, did, under oath, return to the county auditor of the county of Hamilton, in the State of Ohio, by letter bearing date the 31st day of May, 1851, the amount of the capital stock loaned by this respondent in said county of Hamilton, as will fully appear from a substantial copy of said return and letter, herewith filed without the jurat, marked exhibit A, as a part of this answer; and without that he has made no return, as in said bill set forth, nor is the same of any obligation against this respondent. This respondent in further answering says, she has been informed that complainant claims to be treasurer of said county; and that a tax has been duly

assessed, under an act of the general assembly of the State of Ohio, entitled "An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State," passed March 21st, 1851, by the proper authority in said county of Hamilton, against the respondent, upon her capital stock so loaned in said county, amounting, for the year A. D. 1851, to the sum of $7,414 61.9; but whether the same be so or not, or whether the same be authorized by the act aforesaid, or whether the same be assessed according to the requisitions of the said act, this respondent is not advised, except by information from others, and therefore requires due proof that said tax has been duly assessed in all respects as said act directs.

This respondent in further answering says, she does not know that the tax duplicate for said county for the year 1851, containing said tax so alleged to be assessed against this respondent, has been placed in the hands of the said complainant, as in his said bill charged, for collection, and of that she requires proof.

This respondent in further answering says, it is true she has not paid said tax, as in said bill averred, because she charges by the laws of the land, under her contracts with the State of Ohio, hereinafter set up by way of defence to said tax, she is under no legal obligation to pay the same.

This respondent in further answering says, as at present advised, she makes no answer as to her debtors in said county; nor is it at all material she should, as, in the event of her being held responsible for said tax, she will promptly discharge the same, as it may ultimately be adjudged against her.

This respondent in further answering says, she has been informed and charges that, on or about the twenty-third day of March, 1852. the auditor of Hamilton cnunty, in the State of Ohio, being advised the tax assessed as herein before stated was illegal and not authorized by law, made a new assessment upon said sum so returned, as herein before stated, of $4,856 57.8, the sum set up in said bill, and about the same time required a return from the said Charles Stetson of the surplus funds of this respondent, on 31st May, 1851, which said Stetson, under protest as aforesaid, made to be $83,578 70, and thereupon the said auditor of Hamilton county levied a further tax of $1,253 68, as this respondent is informed, but upon what authority of law this respondent is unadvised, and insists that the said assessment is irregular, unlawful, and without legal authority, and void against this respondent, and complainant has no lawful right to collect any portion of said tax as assessed against this respondent.

This respondent having answered so much and such parts of said bill as she is advised it is material for her to make answer unto, by way of further defence to said bill of complaint, shows and charges that by the twenty-third section of her act of incorporation, passed February 12th, 1834, power was given to this respondent until the year 1843 to issue and circulate her bills or notes to an amount not exceeding twice the amount of the funds deposited with said company for a

time not less than one year, other than capital, but not at any time to have in circulation an amount greater than one half the capital actually paid in, and invested in bonds or notes secured by unincumbered real estate, agreeably to the seventh section of said act, nor a greater amount than twice the amount of deposits for the time being, and lend the same at a rate of interest not exceeding six per cent. per annum, as will fully appear from said act, to be found in volume 32, page 68, of the local laws of Ohio, and to which reference is hereby had as a part of this her answer. She also shows and charges that, by the twenty-fifth section of said act, it was provided that no higher taxes should be levied on the capital stock or dividends of this respondent than should be levied on the capital stock or dividends of other incorporated banking institutions in the State, as will fully appear from said act, to be found as aforesaid, and to which reference is hereby further had as a part of this her answer for that purpose. She also shows and charges that the general assembly of the State of Ohio, being desirous to withdraw from the banks in the State of Ohio the power to issue small notes and bills as granted to them by their charters, and to suppress the circulation thereof, proposed by an act entitled "An act to prohibit the circulation of small notes," passed March 14th, 1836, that should any bank in this State prior to the fourth day of July, 1836, with the consent of its stockholders, by an instrument of writing under its corporate seal, addressed to the auditor of State, surrender the right conferred by its charter to issue or circulate notes or bills of a less denomination than three dollars after the fourth day of July, 1836, and notes or bills of a less denomination than five dollars after the fourth day of July, 1837, then and in that case the auditor of State should be authorized to draw on such bank only for the amount of five per cent. upon its dividends declared after the surrender aforesaid as a tax, and to collect the same, as will fully appear from said act. She also shows and charges that this respondent, with the consent of her stockholders, by an instrument of writing under her corporate seal, addressed to John A. Bryan, auditor of the State of Ohio, bearing date on the 22d day of June, 1836, and duly transmitted to and received by the said John A. Bryan, auditor of the State of Ohio, prior to the 4th day of July, 1836, and filed, as respondent charges, in the office of said auditor, and of which exhibit B, herewith filed as a part of this her answer, is a substantial copy, did surrender the rights conferred by her charter as aforesaid, to issue and circulate notes or bills of a less denomination than three dollars after the fourth day of July, 1836, and notes or bills of a less denomination than five dollars after the fourth day of July, 1837, as will fully appear therefrom; and thereby this respondent lost her power to issue and circulate said small notes or bills, as secured to her by her charter, relying upon the good faith of the State of Ohio to maintain her part of her contract, as this respondent has done at all times hitherto, and is ready to make appear as the court may require; and by reason of said contract of surrender of the rights conferred as aforesaid, this respondent insists, she is only liable to a tax of five per cent. upon dividends declared by her as contemplated by said act, and any other tax allowable

under the twenty-fifth section of the act incorporating this respondent, inconsistent therewith, is restrained thereby and unlawful, being repugnant to the true import and intent of the said contract of surrender. She also shows and charges that, by the sixtieth section of the act of 24th February, 1845, passed by the general assembly of the State of Ohio, to incorporate the State Bank of Ohio and other banking companies, it is enacted, that such banking company as may be organized under that act shall semi-annually, on the days of declaring dividends, set off to the State six per centum on the profits, deducting therefrom the expenses and ascertained losses of the company for the six months next preceding; which sum so set off shall be in lieu of all taxes to which such company, or the stockholders thereof, on account of stocks owned therein, would otherwise be subject. And by reason thereof, and inasmuch as the general assembly of the State of Ohio, by the act incorporating this respondent, had stipulated that no higher tax should be levied upon the capital stock or dividends of this respondent than should be levied upon other banking institutions, aside from the contract of 22d June, 1836, aforesaid, no tax could be levied upon the capital stock or dividends of this respondent beyond the tax allowed by the said act of 24th February, 1845. She also shows and charges, that since the contract of 22d June, 1836, she has, in compliance therewith, paid the tax of five per cent. upon all dividends by her declared, and especially the tax upon the dividends declared on the first Monday of July, 1851, and the first Monday in January, 1852, amounting to $8,000, upon the order of the auditor of State, as she is ready to make appear, besides paying the ordinary taxes levied upon her real estate, as in other cases. She also shows and charges, that she does, on the first Monday of January and July, annually, as required by her charter, make and declare such dividends resulting from her profits as she can safely make and declare without impairing or lessening, in any wise, her capital stock; and the tax paid as aforesaid upon her dividends is, in fact, upon her annual nett profits, no reservation therefrom being made beyond what is deemed necessary and proper to guard against the contingencies of business, and in good faith to keep the capital stock unimpaired. She also shows and charges, that she has been advised the tax levied against her in the various counties in the State in the aggregate exceeds twenty thousand dollars for the year A. D. 1851, as will appear from exhibit C, herewith filed as a part of this her answer, the same being a statement of said taxes as furnished to this respondent by the auditor of the State of Ohio, as levied under said act of 21st March, 1851, as aforesaid; all which she is ready to make appear as the court may require.

This respondent, by way of further defence to said bill, says, that she in no manner nor form has ever accepted the said act of 21st March, 1851, nor admitted its validity against her; nor has she, in any manner or form, ever surrendered or yielded up the privileges of her charter, except by said contract of 22d June, 1836; nor has she, in any manner or form, ever surrendered or yielded up the rights secured to her by said contract of 22d June, 1836; and she insists, and will

maintain, that the taxes assessed against her as aforesaid for the year A. D. 1851, under said act of 21st March, 1851, and especially the tax claimed by the complainant in his said bill, is repugnant to her charter, and the rights secured to her by said contract of 22d June, 1836, in violation of the constitution of the State of Ohio, and the constitution of the United States, and void in law, and she is under no obligation to pay the same. She therefore prays that the injunction sought be refused, or, if allowed, be dissolved, and the receiver, if any, be discharged, and she restored to all things as fully as if complainant's bill had not been filed against her; and without that, that she be dismissed with her costs and charges in their behalf expended.

The Ohio Life Insurance and Trust Company doth hereby verify this her answer, by causing her corporate seal to be hereunto affixed.

V. WORTHINGTON, *Sol.* [SEAL.]

Exhibit A.

OHIO LIFE INSURANCE AND TRUST COMPANY,
CINCINNATI, *May* 31, 1851.

To the auditor of county, Ohio:

SIR: Protesting against all lawful right to require of this company any statement of the amount of its loans of capital in your county for taxation, I hereby advise you the amount of such loans is $494,308 22 at the date hereof, as appears from the books of said company.

C. STETSON, *President.*

Charles Stetson, president of the Ohio Life Insurance and Trust Company, being sworn, says that the above statement is true, to the best of his knowledge and belief.

C. STETSON, *President.*

Sworn to and subscribed before me, this 31st May, 1851.

In furnishing the above statement, I am instructed by the board of trustees of this company to inform you that they consider the act of the legislature, under which it is made, inoperative so far as it regards this institution; and the payment of any tax levied by virtue of said act will be contested.

C. STETSON, *President.*

Exhibit B.

To JOHN A. BRYAN, auditor of the State of Ohio:

Whereas the stockholders of the Ohio Life Insurance and Trust Company, at a meeting held at the office of said company, in Cincinnati, on the third Monday (20th) of June, A. D. 1836, to take into consideration and decide on the proposition contained in the act of the general assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed 14th March, 1836, it was resolved,

that the stockholders of the company do consent, upon the consideration contained in the act of the general assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, to surrender the right conferred by the act incorporating this company to issue or circulate notes or bills of a less denomination than three dollars after the fourth day of July, eighteen hundred and thirty-six, and any notes or bills of a less denomination than five dollars after the fourth day of July, eighteen hundred and thirty-seven; and that the president be authorized, by an instrument of writing under the corporate seal of the company, addressed to the auditor of State, to make surrender of said right accordingly. And whereas the board of trustees of the Ohio Life Insurance and Trust Company, at a meeting held on the 21st day of June, A. D. 1836, having under consideration the said resolution of the stockholders, at their meeting held on the 20th inst., declaring their consent to the proposition contained in the said act, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, it was, by the said board of trustees, resolved, that the president be authorized, by an instrument of writing under the corporate seal of the company, addressed to the auditor of State, and upon the consideration contained in the said act of the general assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, to make surrender of the right conferred by the charter of this company to issue or circulate notes or bills of a less denomination than three dollars after the fourth day of July, eighteen hundred and thirty-six, and any notes or bills of a less denomination than five dollars after the fourth day of July, eighteen hundred and thirty-seven:

Now, therefore, be it known, that the Ohio Life Insurance and Trust Company, in pursuance of the said act of the general assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, and of the resolutions and proceedings of the stockholders and board of trustees aforesaid, and upon the consideration contained in the said act of the general assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, do, by this instrument of writing, make surrender of the right conferred by the charter of the said The Ohio Life Insurance and Trust Company to issue or circulate notes or bills of a less denomination than three dollars after the fourth day of July, eighteen hundred and thirty-six, and any notes or bills of a less denomination than five dollars after the fourth day of July, eighteen hundred and thirty-seven.

In witness whereof the Ohio Life Insurance and Trust Company have caused the corporate seal of the company to be affixed to this instrument of writing, and the same to be attested in their behalf by their president and secretary, at Cincinnati, this 22d day of June, A. D. eighteen hundred and thirty-six.

[SEAL.]

(Signed) M. T. WILLIAMS,
President.

SAMUEL R. MILLER, *Secretary*

Exhibit C.

Statement of the amount of capital of the Ohio Life Insurance and Trust Company loaned in each county on the 31st day of May, 1851, and taxes assessed thereon for the year 1851, as furnished to said company by the auditor of State.

Statement showing the amount of capital of the Ohio Life Insurance and Trust Company, as loaned on the last day of May, 1851, and taxes *and* assessed thereon, made for the year 1851:

County.	Loans.	Tax.
Allen	$7,785 00	$90 82.5
Ashtabula	4,200 00	35 70.0
Athens	500 00	5 41.0
Anglaise	500 00	6 75.0
Brown	7,600 00	46 89.6
Butler	150,453 00	1,281 74.4
Belmont	6,226 40	149 10.0
Cuyahoga	99,364 60	1,401 03.2
Coshocton	5,210 50	43 77.2
Columbiana	20,200 00	161 60.0
Carroll	19,467 00	174 06.7
Clinton	20,400 00	191 36.0
Clermont	42,840 52	308 25.5
Clark	54,400 32	519 08.4
Champaign	51,365 77	248 46.0
Crawford	3,453 50	29 00.5
Delaware	6,550 00	60 26.0
Darke	12,550 00	124 30.4
Erie	4,260 00	35 35.8
Fairfield	27,415 37	285 71.9
Franklin	94,208 40	1,014 14.9
Fayette	1,300 00	No return.
Geauga	2,650 00	8 90.9
Gallia	4,465 00	44 65.0
Greene	64,020 00	430 32.6
Guernsey	1,820 95	13 93.0
Huron	14,223 03	139 39.5
Hamilton	494,308 22	7,414 61.9
Hardin	2,180 00	34 44 4
Harrison	27,455 00	205 46.0
Holmes	13,600 00	113 29.8
Henry	2,700 00	No return.
Jefferson	6,250 00	66 08.8
Jackson	1,000 00	No return.

Statement continued.

County.	Loans.	Tax.
Knox	$35,842 00	$354 83.5
Lake	1,300 00	15 08.0
Licking	1,475 00	14 31.6
Lorain	14,572 20	148 63.4
Logan	10,669 30	123 74.8
Lucas	14,781 00	290 15.0
Miami	24,378 10	221 84.0
Madison	13,063 64	100 00.2
Marion	27,031 18	270 31.0
Morgan	2,650 00	No return.
Monroe	4,600 00	49 00.0
Montgomery	58,582 67	503 04.7
Muskingum	6,550 00	64 74.0
Medina	1,859 25	15 80.1
Mercer	6,326 41	No return.
Ottawa	500 00	Do.
Paulding	1,700 00	22 67.8
Pickaway	61,300 00	506 42.3
Preble	20,900 00	167 20.0
Portage	30,488 28	243 91.2
Perry	1,750 00	14 56.1
Ross	24,214 69	260 30.0
Richland	11,025 00	222 70.5
Sandusky	8,841 74	115 73.8
Shelby	7,335 00	99 75.6
Scioto	7,400 00	102 30.4
Seneca	47,503 00	410 90.0
Starke	73,534 71	604 45.0
Summit	700 00	6 93.0
Trumbull	2,100 00	15 40.0
Tuscarawas	36,890 00	283 68.4
Union	7,145 00	80 02.4
Van Wert	3,300 00	61 74.3
Vinton	1,000 00	9 81.6
Wayne	14,100 00	130 43.0
Williams	4,019 00	70 36.8
Wood	5,546 49	No return.
Warren	76,768 67	683 23.7
Washington	5,274 43	61 17.8
Pike	2,500 00	45 32.9

HENRY DEBOLT, Treasurer of Hamilton county, Ohio,
vs.
THE OHIO LIFE INSURANCE AND TRUST COMPANY et al.
} No. 5705.—In chancery.

It is agreed by the complainant and the Ohio Life Insurance and Trust Company, one of the defendants, that the funds, six thousand eight hundred and eighty-four $\frac{78}{100}$ dollars, paid into court in the above cause by the Ohio Life Insurance and Trust Company, shall be deposited by the clerk of this court in the Ohio Life Insurance and Trust Company, at an interest of six per cent. per annum, and receive a certificate of deposit thereof, to be held by said clerk, subject to the terms of the decree and order of the court.

MORRIS, TILDEN and RERIDEN,
For Debolt.
GEO. E. PUGH, *per Geo. H. Pendleton.*
V. WORTHINGTON,
Solicitor of the Ohio Life Insurance and Trust Com'y.

June 26, 1852.

To John A. Bryan, auditor of the State of Ohio.

Whereas the stockholders of the Ohio Life Insurance and Trust Company, at a meeting held at the office of said company in Cincinnati, on the third Monday (20th) of June, A. D. 1836, to take into consideration and decide on the proposition contained in the act of the General Assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 11th, 1836, resolved, that the stockholders of this company do consent, upon the consideration contained in the act of the General Assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, to surrender the right conferred by the act incorporating this company to issue or circulate notes or bills of a less denomination than three dollars, after the fourth day of July, eighteen hundred and thirty-six, and any notes or bills of a less denomination than five dollars after the fourth day of July, eighteen hundred and thirty-seven; and that the president be authorized, by an instrument of writing under the corporate seal of the company, addressed to the Auditor of State, to make surrender of said right accordingly:

And whereas the board of trustees of the Ohio Life Insurance and Trust Company, at a meeting held on the 21st day of June, A. D. 1836, having under consideration the said resolution of the stockholders at their meeting held on the 20th instant, declaring their consent to the proposition contained in the said act, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, it was, by the said board of trustees, resolved, that the president be authorized, by an instrument of writing under the corporate seal of the company, ad-

dressed to the auditor of State, and upon the consideration contained in the said act of the General Assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," to make surrender of the right conferred by the charter of this company to issue or circulate notes or bills of a less denomination than three dollars after the fourth day of July, eighteen hundred and thirty-six, and any notes or bills of a less denomination than five dollars after the fourth day of July, eighteen hundred and thirty-seven:

Now, therefore, be it known, that the Ohio Life Insurance and Trust Company, in pursuance of the said act of the General Assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, and of the resolutions and proceedings of the stockholders and board of trustees aforesaid, and upon the consideration contained in the said act of the General Assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed March 14th, 1836, do, by this instrument of writing, make surrender of the right conferred by the charter of the said The Ohio Life Insurance and Trust Company to issue or circulate notes or bills of a less denomination than three dollars, after the fourth day of July, eighteen hundred and thirty-six, and any notes or bills of a less denomination than five dollars after the fourth day of July, one thousand eight hundred and thirty-seven.

In witness whereof, The Ohio Life Insurance and Trust Company have caused the corporate seal of the company to be affixed to this instrument of writing, and the same to be attested in [L. S.] their behalf by their president and secretary, at Cincinnati, this the twenty-second day of June, A. D. eighteen hundred and thirty-six.

[SEAL.] M. T. WILLIAMS, *Pres't.*

SAM'L H. MILLER, *Secretary.*

There is nothing marked on the original of the foregoing, nor is there any record, to my knowledge, to show the date of its reception at this office.

II.

Statement of the amount loaned by the Ohio Life Insurance and Trust Company, and the taxes levied thereon in the several counties of Ohio, named as below, as returned by the auditors of the various counties for the year 1851.

Counties.	Loan.	Tax.	Counties.	Loan.	Tax.
Allen	$7,785	$90 82.5	Logan	$10,668	$123 74.8
Ashtabula	4,200	35 70.0	Lorain	14,572	148 63.4
Athens	500	5 41.0	Lucas	14,718	290 15.0
Auglaize	500	6 75.0	Madison	13,063	99 82.2
Belmont	6,226	46 89.6	Marion	27,031	270 31.0
Brown	7,600	69 80.0	Medina	1,859	15 80.1
Butler	150,453	1,281 74.4	Miami	24,378	221 84.0
Carroll	19,467	174 06.7	Monroe	4,600	49 00.0
Champaign	20,200	248 46.0	Montgomery	58,552	503 04.7
Clark	54,400	519 08.4	Muskingum	6,650	64 74.0
Clermont	42,814	308 25.5	Paulding	1,700	22 67.8
Clinton	20,800	191 36.0	Perry	1,750	14 56.1
Columbiana	20,200	161 60.0	Pickaway	61,800	506 42.3
Coshocton	5,211	43 77.2	Pike	2,500	20 48.9
Crawford	3,453	29 00.5	Portage	30,489	243 91.2
Cuyahoga	99,364	1,401 03.2	Preble	20,900	167 20.0
Darke	12,550	124 30.4	Richland	11,025	222 70.5
Delawar.e	6,550	60 26.0	Ross	24,214	260 30.0
Erie	4,260	35 35.8	Sandusky	8,841	115 73.8
Fairfield	27,415	285 71.9	Scioto	7,400	102 30.4
Franklin	94,208	1,014 14.9	Senica	47,503	410 90.0
Gallia	4,465	48 99.1	Shelly	7,335	99 75.6
Geauga	1,350	8 90.9	Stark	73,534	604 45.0
Greene	64,020	403 32.6	Summit	700	6 39.0
Guernesey	1,821	13 93.0	Trumbull	2,100	15 40.0
Hamilton	494,308	7,414 61.9	Tuscarawas	36,890	283 68.4
Hardin	2,180	34 44.4	Union	7,145	80 02.4
Harrison	27,455	205 46.0	Van Wirt	3,300	61 74.3
Holmes	13,600	113 29.8	Vinton	1,000	9 81.6
Huron	14,224	139 39.5	Warren	76,768	683 23.7
Jefferson	6,250	66 08.8	Washington	5,274	61 17.8
Knox	35,842	354 83.5	Wayne	14,100	130 43.0
Lake	1,300	15 08.0	Williams	4,019	70 36.8
Licking	1,475	14 31.6			

III.

Statement of the amount paid into the State treasury, for the years below specified, by the Ohio Life Insurance and Trust Company, being a tax of five per cent. on the dividends reported to the auditor of State by said company, viz:

For the year	1836,	the sum of	$8,000 00
Do.	1837,	do.	7,500 00
Do.	1838,	do.	6,500 00
Do.	1839,	do.	9,000 00
Do.	1840,	do.	3,500 00

For the year	1841,	the sum of	$7,000 00
Do.	1842,	do.	3,500 00
Do.	1843,	do.	6,500 00
Do.	1844,	do.	7,000 00
Do.	1845,	do.	8,000 00
Do.	1846,	do.	8,000 00
Do.	1847,	do.	8,000 00
Do.	1848,	do.	3,000 00
Do.	1850,	do.	8,000 00
Do.	1851,	do.	8,000 00
Do.	1852,	do.	4,000 00

AUDITOR OF STATE'S OFFICE, OHIO,
Columbus, June 26, 1852.

I certify the foregoing copy and statements (marked I, II, III) to be correct, as taken from the files and books of this office.

[L. S.] In testimony whereof I have signed my name, and affixed the official seal.

WM. D. MORGAN,
Auditor of State,
By J. M. ARMSTRONG,
Chief clerk.

And now here, to wit, on the twentieth day of September, in the term of September, Anno Domini one thousand eight hundred and fifty-two, comes the said The Ohio Life Insurance and Trust Company, by V. & J. T. Worthington, solicitors, and file their certain motion closed, in words and figures as follows, to wit:

Hamilton district court.—In chancery.

THE OHIO LIFE INSURANCE AND TRUST COMPANY } 511.
ads.
HENRY DEBOLT, treasurer of Hamilton county. }

As difficult and important questions arise in the above cause, now pending before this court, the Ohio Life Insurance and Trust Company, by her counsel, now moves the judges of this court, or the judge of the supreme court, now sitting in this court, to cause the same to be reserved and sent to the supreme court for its decision, in pursuance of the statute in such case made and provided.

V. & J. T. WORTHINGTON,
Solicitors.

And now here, to wit, on the twenty-fifth day of September, in the term and year last aforesaid, the court make the following order, to wit:

3102.

Min. 41—District court, September term, 1852.

HENRY DEBOLT, treasurer of Hamilton county,
vs.
THE OHIO LIFE INSURANCE AND TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Wiggins. } 511.

Appeal from the court of common pleas.—In chancery.

Inasmuch as difficult and important questions have arisen in this case, the court direct it to be reserved for argument and decision in the supreme court of Ohio, at Columbus, upon the motion made by the Ohio Life Insurance and Trust Company in this cause.

And afterwards, to wit, on the twenty-second day of October, Anno Domini one thousand eight hundred and fifty-two, the following certificate of reserval to the supreme court of Ohio was made and issued in said cause, to wit:

HENRY DEBOLT, treasurer of Hamilton county,
vs.
THE OHIO LIFE INSURANCE AND TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Wiggins. } 511.

Appeal from the court of common pleas.—In chancery.

Inasmuch as difficult and important questions have arisen in this case, the court direct it to be reserved for argument and decision in the supreme court of Ohio, at Columbus, on the motion made by the Ohio Life Insurance and Trust Company in this cause.

THE STATE OF OHIO,
Hamilton county, ss.

I, James M. McMaster, clerk of the district court of Ohio, within and for said county, do hereby certify, that the above is a correct copy of the journal entry made in the above named case by said court, at its September term, A. D. 1852, as the same appears by the journal of said court at said term, page 41, in my office.

[SEAL.] Witness my hand, and the seal of said district court, at Cincinnati, this 22d day of October, A. D. 1852.

J. M. McMASTER,
Clerk dist. court, Ham. county, O.,
By H. BABITT, *Deputy*.

The replication of Henry Debolt, treasurer of Hamilton county, complainant, to the answer of the Ohio Life Insurance and Trust Company.

This repliant, saving to himself all manner of exceptions to the

manifold insufficiencies of the said answer, nevertheless, for replication says, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said The Ohio Life Insurance and Trust Company is uncertain, untrue, and insufficient without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, or traversed, is true. All which this repliant is and will be ready to aver and prove as this court shall direct.

Wherefore he prays, as in and by his said bill he has already prayed.

GEO. E. PUGH, *Solicitor.*

Filed March 2, 1853.

K. THOMAS, *Clerk.*

And now here, to wit, on the thirteenth day of April, in the term of April, anno Domini one thousand eight hundred and fifty-three, the following certified copy of a decree from the supreme court of the State of Ohio, sent to the district court of Hamilton county for entry therein, having been seen and examined by this court, it is ordered to be entered on the journal as follows, to wit:

HENRY DEBOLT, Treasurer of Hamilton county, vs. THE OHIO LIFE INSURANCE AND TRUST COMPANY, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick.	81. In chancery. Reserved in Hamilton county.

This case came on to be heard on the bill of complaint, the demurrer of the Ohio Life Insurance and Trust Company and Charles Stetson, the subsequent answer of the said company, and the replication thereto, which was this day filed by consent, together with the exhibits and proofs, and was argued by counsel; and the court being now fully advised of the premises find that on the thirty-first day of May, in the year one thousand eight hundred and fifty-one, the said company, by Charles Stetson, its president, returned to the auditor of Hamilton county, under the oath of the said president, that the amount of its capital stock, loaned in the said county, was four hundred and ninety-four thousand three hundred and eight dollars and twenty-two cents, ($494,308 22,) which the court find to have been the true amount of its capital stock, loaned in the said county at that time. And the court further find, that the auditor of the said county entered the amount so returned upon the duplicate of the said county for taxation, in the year one thousand eight hundred and fifty-one; and thereupon proceed to assess and did assess, upon the said sum of average rate per centum assessed for all purposes upon real and personal pro-

perty within the said county, which assessment, amounting to the sum of four thousand eight hundred and fifty-six dollars and fifty-seven cents and eight mills, ($4,856 57.8,) was duly entered against the said company, upon the duplicate of the said county for the year aforesaid. And the court further find, that on the said thirty-first day of May, in the year aforesaid, the said company owned and was possessed of a large amount of surplus and contingent funds, and of capital stock not loaned in any county of the State, which amounts were subject to taxation in the county of Hamilton aforesaid; and that on the twenty-third day of March, in the year eighteen hundred and fifty-two, the said company returned to the auditor of the said county, that the aggregate amount of the said surplus and contingent funds, and capital stock not loaned on the said thirty-first day of May, in the year one thousand eight hundred and fifty-one, was eighty-three thousand five hundred and seventy-eight dollars and seventy cents, ($83,578 70,) which amount the court find to have been the true aggregate amount of the said surplus and contingent funds, and capital stock not loaned at the date last mentioned. And the court further find, that the auditor of the said county did thereupon enter the said last-mentioned amount, as additional to the amount of the capital stock loaned in the said county upon the duplicate of the said county, for taxation for the year one thousand eight hundred and fifty-one; and that the said auditor thereupon proceeded to assess, and did assess, upon the duplicate aforesaid, against the said company, for the year last aforesaid, the same rate of taxation for all purposes as was then assessed for the like purposes, and to the same extent upon other like personal property for the said year in the ward in which the office of the said company was then located, which last-mentioned taxes, so assessed, amounted to twelve hundred and fifty-three dollars and sixty-eight cents, ($1,253 68,) in all.

And the court further find, that the said duplicate, containing the said sum of four thousand eight hundred and fifty-six dollars and fifty-seven cents and eight mills, assessed against the said company as taxes for the year one thousand eight hundred and fifty-one, was duly delivered to the complainant as treasurer of the said county of Hamilton for collection, and that afterwards, whilst the said duplicate was in his possession as such treasurer for collection, the same was rightly amended by the auditor of the said county, by entering thereupon the said sum of twelve hundred and fifty-three dollars and sixty-eight cents, as additional taxes assessed against the said company for the said year one thousand eight hundred and fifty-one.

And the court further find, that the said company has not paid either of the said sums so assessed for taxes, nor any part thereof; whereby a penalty of five per centum has accrued upon the amount thereof to the complainant, as such treasurer, for his own use.

And thereupon the court find the equity of the cause to be with the complainant, and that he is entitled to have from the said The Ohio Life Insurance and Trust Company, as well the said sum of four thousand eight hundred and fifty-six dollars fifty-seven cents and eight

mills, and the said sum of twelve hundred and fifty-three dollars and sixty-eight cents, as the penalty aforesaid, with the costs of collection and interest upon the same; wherefore it is ordered, adjudged, and decreed, that the sum of six thousand eight hundred and sixty-four dollars and seventy-eight cents, ($6,864 78,) heretofore estimated by the parties as the amount of the said taxes, penalty, costs, and interest, and brought into court by the said company to abide the final decree in this cause, be paid to the complainant by the clerk of the court of common pleas of Hamilton county, under whose direction and that of the said court it was deposited in virtue of a former order, together with the interest which may have accrued thereon, (if any,) since the said deposit was made; and that as to the other defendants, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robert Burnet, and Samuel Fosdick, the said bill of complaint be dismissed.

And it is furthermore ordered, adjudged, and decreed, that the said The Ohio Life Insurance and Trust Company pay the costs of this suit, to be taxed by the clerk of the district court of Hamilton county, within ninety days from the entry of this decree; and in default thereof, that execution be awarded therefor as upon judgments at law.

And this cause is remanded to the court of common pleas of Hamilton county, with a special mandate to proceed in execution of this decree. Ordered, that a certified copy of this decree be sent to the district court of Hamilton county for entry therein.

And thereupon, on motion of the counsel for the said The Ohio Life Insurance and Trust Company, defendants, it is ordered to be certified and made a part of the record that the said company did set up, by way of defence to the prayer of the bill of complainants, a certain act of the general assembly of this State, entitled An act to incorporate the Ohio Life Insurance and Trust Company, passed the twelfth day of February, in the year eighteen hundred and thirty-four; and also a certain other act of the general assembly, entitled An act to prohibit the circulation of small bills, passed the fourteenth day of March, in the year eighteen hundred and thirty-six; and thereupon claimed, that in virtue of the said acts, and of the instrument of writing, "exhibit B," attached to its answer, the general assembly of this State had entered into a contract with the said company never to impose upon the property of the said company a greater or different burden of taxation than five per centum upon its dividends of nett profits, and that therefore the act of the general assembly, entitled An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State, passed the twenty-first day of March, in the year eighteen hundred and fifty-one, impaired the obligation of a contract, and therein was repugnant to the Constitution of the United States; but the court decided that there was no conflict between the said several acts, for the reason that the said act passed the fourteenth day of March, in the year eighteen hundred and thirty-six, expired, and ceased to have any effect or operation as respects The Ohio Life Insurance

and Trust Company, on the first day of January, in the year eighteen hundred and forty-three, when the power of the said company to issue bills or notes for circulation expired and ceased by the terms of the said act passed the twelfth day of February, in the year eighteen hundred and thirty-four; and that there was, therefore, at the date of the said act passed the twenty-first day of March, in the year eighteen hundred and fifty-one, no such contract, agreement, pledge, or understanding as the said company claimed; and that the said act passed the twenty-first day of March, in the year eighteen hundred and fifty-one, was, in that respect, constitutional and valid; and it was ordered to be further certified on the same motion, that the said company did likewise set up by way of defence to the prayer of said bill a certain act of the general assembly of this State, entitled An act to incorporate the State Bank of Ohio and other banking companies, passed the twenty-fourth day of February, in the year eighteen hundred and forty-five, and thereupon claimed that in virtue of the said last-mentioned act, and of the said act passed the twelfth day of February, in the year eighteen hundred and thirty-four, the general assembly of this State had entered into a contract with the said company not to impose upon the property of the said company a greater or different burden of taxation than six per centum upon its dividends of nett profit, until after the first day of May, in the year eighteen hundred and sixty-six, and that therefore the act of the said general assembly, entitled An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State, passed the twenty-first day of March, in the year eighteen hundred and fifty-one, impaired the obligation of a contract, and therein was repugnant to the Constitution of the United States; but the court decided that the said act passed the twenty-fourth day of February, in the year eighteen hundred and forty-five, contained no pledge on the part of the State not to alter the amount, or the mode of taxation therein specified, but that the taxing power of the general assembly of this State over the property of companies formed under that act, was and is the same as over the property of individuals, and that there was, consequently, no such contract, agreement, pledge, or understanding as the said company claimed; and that whether the franchises of companies organized under the said last-mentioned act could not be revoked, changed, or modified, the said act passed the twenty-first day of March, in the year eighteen hundred and fifty-one, did not, upon any construction, impair any right secured to such companies, by the said act passed the twenty-fourth day of February, in the year eighteen hundred and forty-five, and that the said act passed the twenty-first day of March, in the year eighteen hundred and fifty-one, was therefore a constitutional and valid law. And it is ordered to be certified, also, that the question of the validity of the said act passed the twenty-first day of March, in the year eighteen hundred and fifty-one, was material and necessary to the decision of this cause, and that the validity of the said act was drawn in question (in the manner and to the intent herein before specified) as being repugnant to the Consti-

tution of the United States, and that the decision of the court was in favor of the validity of the said law. And it is further certified that this court is the highest court of law and in equity in the State of Ohio, in which a decision in this suit can be had.

THE STATE OF OHIO,
Franklin county, city of Columbus.

I, Kendall Thomas, clerk of the supreme court of the State of Ohio, do hereby certify, that the foregoing is truly taken, and correctly copied, from the journal of said court.

Witness my hand and the seal of said court, this 11th day of March, A. D. 1853.

[SEAL.] KENDALL THOMAS, *Clerk.*

THE STATE OF OHIO,
Hamilton county, ss.

I, James M. McMaster, clerk of the district court of Ohio, within and for said county, do hereby certify, that the foregoing is a full and correct transcript of the proceedings had in the above-named case, wherein Henry Debolt, treasurer of Hamilton county, is complainant, and The Ohio Life Insurance and Trust Company, Charles Stetson, Nicholas Longworth, Joseph Longworth, Jacob Burnet, Robt. Burnet, and Samuel Wiggins are defendants, as the same appears from the docket and journal entries in said case, and the papers remaining on file in my office.

Witness my hand and the seal of said district court, at Cincinnati, [SEAL.] this 14th day of April, anno Domini, one thousand eight hundred and fifty-three.

J. M. McMASTER, *Clerk.*

Transcript.

I allow a writ of error and supersedeas in this case.

JOHN McLEAN,
Justice Supreme Court, U. S.

15th April, 1853.

UNITED STATES OF AMERICA, *ss.*

Supreme Court of the United States.

The President of the United States of America, to the honorable the judges of the district court of the State of Ohio, for Hamilton county, greeting:

Because, in the record and proceedings, and also in the rendition of a decree by the supreme court of the State of Ohio, (the record of which is only found in your court, and which decree appears to have been transmitted from said supreme court, and entered of record in said dis-

trict court on the 13th of April, 1853,) in a certain suit in chancery, wherein one Henry Debolt, treasurer of Hamilton county, is plaintiff, and The Ohio Life Insurance and Trust Company, and others, are defendants, a manifest error hath happened, to the great damage of the said The Ohio Life Insurance and Trust Company, as by her complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next, in the said supreme court then and there to be held, that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this eighteenth day of [L. S.] April, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the 77th.

Attest: WM. MINER, *Clerk*.

I allow this writ of error and supersedeas.

JOHN McLEAN.

15th April, 1853.

THE STATE OF OHIO, *Hamilton county, ss.*

A duly certified transcript of the record and proceedings had in the within mentioned cause, by the district court of the State of Ohio, for Hamilton county, together with all things concerning the same, are herewith returned to the Supreme Court of the United States, as within commanded.

Witness my hand, and the seal of the said district court of the State of Ohio, within and for Hamilton county, this 20th day of [L. S.] April, A. D. 1853.

J. M. McMASTER,
Clerk dist. court, Ohio, Hamilton county,
By H. BABITT, *Deputy*.

Writ of error and certificates.

THE STATE OF OHIO, *Hamilton county, ss.*

I, James M. McMaster, clerk of the district court of Ohio, within and for Hamilton county, do hereby certify, that a copy of the annexed writ of error, issued by the Supreme Court of the United States in the case of The Ohio Life Insurance and Trust Company vs. Henry De-

bolt, has this day been deposited and filed in the clerk's office of said district court, by the said The Ohio Life Insurance and Trust Company, for the said Henry Debolt.

Witness my hand, and the seal of the said district court at Cincinnati, this 20th day of April, A. D. 1853.

[L. S.]

JAMES M. McMASTER,
Clerk district court, Ohio, Hamilton county,
By H. BABITT, *Deputy.*

THE STATE OF OHIO, *Hamilton county, ss.*

I, James M. McMaster, clerk of the court of common pleas within and for said county, do hereby certify, that a copy of the annexed writ of error, issued by the Supreme Court of the United States in the case of The Ohio Life Insurance and Trust Company vs. Henry Debolt, has this day been deposited and filed in the clerk's office of said court of common pleas, by the said The Ohio Life Insurance and Trust Company, for the said Henry Debolt.

Witness my hand, and the seal of the said court of common pleas, at Cincinnati, this 20th day of April, A. D. 1853.

[L. S.]

J. M. McMASTER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

Circuit court, for the seventh circuit, district of Ohio.

I, William Miner, clerk of said circuit court, do certify, that the said The Ohio Life Insurance and Trust Company, plaintiffs in error aforesaid, have filed in the office of said court a bond in error in the foregoing case, approved by the honorable John McLean, a justice of [the] Supreme Court of the United States. Dated this 22d April, 1853.

WM. MINER, *Clerk.*

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To Henry Debolt, treasurer of Hamilton county, greeting:

Whereas the Ohio Life Insurance and Trust Company has obtained the allowance of our writ of error, to the Supreme Court of the United States directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain decree in chancery, wherein you, the said Henry Debolt, treasurer as aforesaid, lately recovered against the said The Ohio Life Insurance and Trust Company the sum of six thousand eight hundred and sixty-four dollars and seventy-eight cents, and costs, as by the said record in the district court of the State of Ohio for Hamilton county (to which the said record has been remitted) remaining appears, in which said record and proceedings, and also in the rendition of the decree thereupon, manifest error hath intervened, as by the said The Ohio Life Insurance and Trust Company we are in-

3106.

formed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this 18th day of April, in the year of our [SEAL.] Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the 77th.

JOHN McLEAN,
Associate Justice Sup. Court U. States, seventh circuit.

The undersigned, attorneys for the within named Henry Debolt, treasurer, hereby acknowledge service of the within citation for the said Debolt, this twentieth day of April, A. D. 1853.

GEO. E. PUGH,
MORRIS, TILDEN & RAIRDEN.

SUPREME COURT OF THE UNITED STATES.

THE OHIO LIFE INSURANCE AND TRUST COMPANY
vs.
HENRY DEBOLT, treasurer, &c. } In error.

And now comes the said The Ohio Life Insurance and Trust Company, plaintiff in error, by her counsel, and says there is error to her prejudice in the record of the proceedings and decree of the supreme court of Ohio, in this, to wit:

1. That the said supreme court of Ohio erred in deciding that the act of the general assembly of the State of Ohio, entitled "An act to incorporate The Ohio Life Insurance and Trust Company," passed the twelfth day of February, in the year eighteen hundred and thirty-four, and the said act of the general assembly of the State of Ohio, entitled "An act to prohibit the circulation of small bills," passed the fourteenth day of March, in the year eighteen hundred and thirty-six, and the said instrument of writing marked "Exhibit B," attached to the answer of the said The Ohio Life Insurance and Trust Company, did not constitute a contract between the said State of Ohio and the said The Ohio Life Insurance and Trust Company never to impose upon the property of the said company a greater or different burden of taxation than five per centum upon its dividends of nett profit; and that therefore the act of the general assembly of the said State, entitled "An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State," passed the twenty-first day of March, in the year eighteen hundred and fifty-one, did not impair the obligation of a contract, and was not repugnant to the Constitution of the United States.

2. That the said supreme court of the State of Ohio erred in deciding that the act of the general assembly of the said State, entitled "An act to incorporate The Ohio Life Insurance and Trust Company," passed the twelfth day of February, in the year eighteen hundred and thirty-four, and the act of the said general assembly entitled "An act to incorporate the State Bank of Ohio and other banking companies," passed the twenty-fourth day of February, in the year eighteen hundred and forty-five, did not constitute a contract between the said State of Ohio and the said The Ohio Life Insurance and Trust Company, whereby the said State of Ohio agreed not to impose upon the property of the said company a greater or different burden of taxation than six per centum upon its dividends of nett profit, until after the first day of May, in the year eighteen hundred and sixty-six; and that therefore the said act of the general assembly of the said State, entitled "An act to tax banks and bank and other stocks the same as other property is now taxable by the laws of this State," passed the twenty-first day of March, in the year eighteen hundred and fifty-one, did not impair the obligation of a contract between the said State and the said The Ohio Life Insurance and Trust Company, and was not repugnant to the Constitution of the United States.

3. That the said supreme court of the State of Ohio erred in deciding that the said act of the general assembly of the State of Ohio, entitled "An act to tax banks and bank and other stocks the same as other property is now taxable by the laws of this State," passed the twenty-first day of March, in the year eighteen hundred and fifty-one, was not contrary to the Constitution of the United States, but that the same was valid and constitutional.

4. That the said supreme court of Ohio gave judgment against the said The Ohio Life Insurance and Trust Company, and in favor of the said Henry Debolt; whereas, by the Constitution of the United States, it should have rendered judgment in favor of the said The Ohio Life Insurance and Trust Company.

5. And that there are other errors in the said proceedings and judgment of the said supreme court of the State of Ohio, to the prejudice and damage of the said The Ohio Life Insurance and Trust Company.

Wherefore the said The Ohio Life Insurance and Trust Company prays the judgment of this court; and that the said proceedings and judgment of the said the supreme court of the State of Ohio may be reversed, annulled, and set aside, and that the said company may be restored to all things which it has lost by reason thereof.

WORTHINGTON & MATTHEWS,
And HENRY STANBERRY,
Solicitors for pl'ff in error.